IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 23992 of 2007(F)

PETITIONER:

A.MALATHY,
JUNIOR SUPERINTENDENT, OFFICE OF THE DIRECTOR OF FACTORIES AND BOILERS, VANCHIYOOR, THIRUVANANTHAPURAM-35.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, LABOUR DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF FACTORIES AND BOILERS, KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC,J.

W.P (C) No.23992 of 2007

Dated this the 17th day of August, 2007

J U D G M E N T

Petitioner is a Junior Superintendent in the service of the 2nd respondent since 11.1.2007 and is aspiring for promotion to the combined category of Senior Superintendent/Additional Inspector of Factories/Head Statistician. Petitioner is the 4th seniormost and is due to retire from service on 30.9.2007. Petitioner relies on Ext.P2 Government Order dated 3.6.1999 by which Government have ordered that in very hard and genuine cases where the incumbents are due to retire within a period of six months and where there is not a large number of seniors to be promoted, promotions be given in relaxation of the ban on provisional promotion. Relying on this Government order, petitioner requested for promotion but the same has been turned down by Exhibit-P4 order of the 1st respondent informing her that request for provisional promotion cannot be considered and steps have already been initiated for preparation of the select list by Departmental Promotion Committee for regular promotion. It is in the aforesaid background that this writ petition has been filed seeking to quash Ext.P4 and to direct the

respondents to promote the petitioner to the category of Senior Superintendent/Additional Inspector of Factories/Head Statistician, immediately.

2. As already noticed, by Ext.P2 Government Order, provisional promotion has been ordered in cases which are very hard and genuine and that the incumbents are due to retire within a period of six months and where there is not a large number of seniors to be promoted. A similar case was considered by this Court in W.P. (C) 8179/2006 and relief was granted by Exhibit-P6 judgment. In that case, this court held as follows:

> "The declaration of probation is necessary, only for considering the petitioners for regular promotion. If they are retiring from service within six months, they are entitled to be considered for provisional promotion to the higher post, provided, there are vacancies in that post and their turns has arisen according to their seniority. It is declared so. The 1st respondent is directed to take a decision on the claim of the petitioners for promotion in the light of the declaration made herein above, within one month from the date of receipt of a copy of this judgment.

Ext.P6 judgment applies to the facts of this case fully. Taking into account the fact that the petitioner is the 4th senior-

most in the category of Junior Superintendent and that she is due to retire on 30.9.2007, I hold that the petitioner's case is covered by Exhibit-P2 Government Order and the fact that probation of the petitioner has not been declared is no bar for considering her case for provisional promotion.

3. It is ordered that the case of the petitioner will be considered for provisional promotion, provided there are vacancies in the higher posts and her turn has arisen according to her seniority. The respondents are directed to take a decision on the claim of the petitioner for provisional promotion in the light of the above, within three weeks from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

(ANTONY DOMINIC,JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007